

A GUIDE TO GUARDIAN SERVICES IN UTAH



Mission Statement

The mission of the Office of Public Guardian is to serve as guardian of last resort for eligible adults.

We provide guardianship assessment, surrogate decision-making, advocacy, coordination of services and financial management to our wards. We also provide education on guardianship and alternatives to guardianship.



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❧ WELCOME ❧

This guide briefly describes guardianship and conservatorship services and resources in Utah.

Office of Public Guardian

Is the agency responsible for providing public guardianship and conservatorship services to incapacitated adults. We were established by the 1999 Legislature in response to longstanding concerns about incapacitated adults without family members or friends to serve as their guardians.

Please call the Office of Public Guardian at 801/538-8255 if you need more information or to make a referral. You can access the Office of Public Guardian website at www.opg.utah.gov.

The information provided here is not intended as legal advice. If you have specific legal questions or concerns, you should consult an attorney.



What is guardianship?

Guardianship is a legal arrangement through which a person (the guardian) is legally authorized to make decisions for another person (the ward).

When is guardianship necessary?

Sometimes people become incapable of making minimally adequate decisions about medical treatment, everyday life or other important matters, and as a result their health and safety are in jeopardy. Under Utah law, a court may appoint a guardian to make decisions for a person when this happens and there are no voluntary arrangements through which the person can be assisted in making adequate decisions.

A person may become “incapacitated” because of:

- A severe developmental disability
- An acute, serious mental illness
- Alzheimer’s disease and similar problems that can occur with old age
- A serious illness or accident
- Alcoholism or drug abuse

However, it is important to understand that many people who experience these problems are quite capable of making their own decisions and do not need a guardian.





Is there more than one kind of guardianship?

In appointing a guardian, the court may grant either a “limited guardianship” or “full guardianship”. Utah law requires the court to grant a limited guardianship unless a full guardianship is necessary. A limited guardianship authorizes the guardian to make only certain decisions. In some cases, however, the court may find that a full guardianship is necessary, and the court may authorize the guardian to make almost all decisions for the ward. Generally, a guardian makes decisions about the ward’s basic needs, such as food, clothing, medical care and shelter.

In addition to guardianship, Utah law provides for appointment of a “conservator” if a person is incapable of making important financial decisions. An incapacitated person who is subject to conservatorship is referred to as a “protected person”.

The court may place an incapacitated person under a guardianship or a conservatorship or both, depending on the kind of decisions the person is incapable of making.

In this handbook, the term “guardianship” generally refers to guardianship and conservatorship, and the term “ward” generally refers to ward and protected person, except when there are important differences between these terms. This handbook is only about guardianship for adults (all persons 18 years of age or older).





What are the responsibilities of a guardian?

Under a limited guardianship, a guardian may only make those decisions that the court has authorized the guardian to make. This may include the authority and responsibility for some, but not all of the decisions identified below.

Under a full guardianship, the guardian is generally responsible for:

- Determining where the ward lives
- Making sure that the ward's basic needs (including food, clothing and comfort) are met
- Making decisions about the ward's health care, habilitation and treatment
- Keeping track and taking care of the ward's property and personal possessions
- Making some financial decisions for the ward, if the ward does not have a conservator
- Protecting and advocating for the ward's rights.

Under a full conservatorship, the conservator is generally responsible for:

- Using the protected person's income and financial resources to provide for the person's care, support and comfort, and to pay the person's bills and debts
- Keeping track and taking care of the protected person's property and personal possessions
- Investing or selling the protected person's assets and property, if this needs to be done to meet the person's needs.

Guardians must report to the court annually about their guardianship activities, the condition of the ward, and the status and condition of the ward's estate. Guardians should consult with an attorney about their specific responsibilities in this area.



Are guardians responsible for the financial, civil, or criminal acts of wards?

Generally, no. Guardians are not legally obligated to use their own funds to provide for their wards. Nor is a guardian generally liable for financial acts of the ward. The law does require, however, that a guardian use the ward's funds only in the ward's interest. A guardian may also be held responsible for the ward's acts if the guardian has been negligent.

What should guardians consider in making decisions for wards?

The Office of Public Guardian recommends that guardians follow the decision-making guidelines of the National Guardianship Association (NGA). Under these guidelines, a guardian should first consider any preferences or wishes expressed by a ward before the ward became incapacitated. If the ward's preferences can be determined, the guardian should honor those preferences.

If the ward has not left advance direction about his or her preferences, the guardian should act as a "substitute decision-maker" and make decisions based on what the ward would want if the ward were not incapacitated. The guardian should:

- Determine the ward's current wishes, if possible
- Consider the ward's values, culture, religious beliefs and personal history
- Consult with the ward's family and friends and health professionals who are likely to know of the ward's preferences and wishes

The guardian should use substitute decision-making to make decisions for the ward unless the guardian concludes that the ward will experience serious and unacceptable harm from a decision.



In situations where the above decision-making methods are not possible or acceptable, the guardian should make decisions based on the “best interest” of the ward. This means making an informed decision, after consulting with professionals knowledgeable about the proposed action and weighing the reasons for the proposed action, the risks and benefits and the available alternatives.

Whatever decision-making guidelines guardians use, guardians always have a legal duty to make decisions that protect the rights, interests and well being of their wards.

Who can become a guardian?

Any competent adult and some agencies can be appointed as a guardian. The law gives preference, however, to appointment of the following persons in the following order:

- Persons suggested by the ward, in the event the ward is capable of expressing a preference
- Close and appropriate family members of the ward
- Other specified persons

How is a guardianship established?

Any person who believes that another person needs a guardian may file a petition for appointment of a guardian with an appropriate state district court. Usually an attorney represents the person filing the petition “the petitioner”. In addition, the petitioner may arrange for the proposed ward to be examined by a physician or psychologist. Unless a physician or psychologist has concluded that the proposed ward is incapacitated, it is unlikely that a court will grant the petition.





After receiving a petition, the court schedules a hearing. Various persons, including the proposed ward, must be notified of the hearing. If the proposed ward does not have a lawyer or cannot afford a lawyer, the court will appoint one. At the initial hearing the judge may schedule a trial, or if the judge finds no opposition to the petition, the judge may grant the petition.

At the trial, if one is necessary, the judge or jury may hear testimony from persons in support of and in opposition to the petition, including the proposed ward and the ward's family, friends and physician. In addition, the judge may appoint qualified individuals called "visitors" to examine and report back to the court about the condition of the proposed ward, the proposed ward's current place of residence and the proposed place of residence. At the conclusion of the hearing or trial, the judge or the jury decides whether or not to grant the petition.

What does a guardianship cost?

There are several different sets of costs that may come from a guardianship.

The first set of costs comes from establishing a guardianship. These are usually limited to court fees and lawyer's fees. In cases where both the petitioner and the proposed ward have limited financial resources, the court may be asked to waive the fees. Lawyer's fees vary considerably and should be discussed.

Persons considering filing for guardianship or persons facing the possibility of guardianship are advised to shop for legal services. Cost may be one factor in selecting a lawyer but it probably should not be the only one. A person may also want to inquire about a lawyer's knowledge and experience in filing guardianship petitions or representing persons contesting guardianships (many lawyers are not familiar with this area of the law). In addition, a person should be comfortable with and have trust in the lawyer.





Limited low cost and no cost legal services are available to persons with low incomes. In addition, the Utah Bar operates a referral service through which an initial consultation with a lawyer may be obtained for a modest fee.

Under certain circumstances, the petitioner for a guardianship may be reimbursed for legal expenses incurred in establishing a guardianship from the estate of the ward. However, this is a decision only the court can make. If a petition for guardianship is denied, the petitioner may be responsible for both the petitioner's expenses *and* the proposed ward's legal expenses.

The second set of costs comes from administering a guardianship. Guardians may be reimbursed for reasonable costs for their services and expenses from the ward's estate. A guardian may need authorization from the court to be reimbursed for some costs. A guardian is required to provide the court with an annual accounting of the ward's finances and estate. Specific requirements in this area depend on the size of the ward's estate and the specific powers and duties of a guardian or conservator. For specific information, you should consult a lawyer.

What rights do proposed wards have?

Under Utah law, every person who faces the possibility of guardianship has certain rights. The law presumes that *all* adults are capable of making their own decisions, unless and until a court finds otherwise. In addition, proposed wards have certain "due process" rights, including the right to:

- Receive notice of the hearing in a language the person understands
- Be represented by an attorney
- Attend the hearing or trial and see and hear the evidence that is presented





- Present evidence in opposition to the petition for the guardianship
- Cross-examine witnesses
- A jury trial

These rights are crucial because they serve as part of a system of checks and balances on guardianship. It is important to remember that even though guardianship may be necessary and very helpful, guardianship limits the self-determination of the person placed under it. There are few legal processes more restrictive of citizens in a free society than guardianship.

What rights do wards have?

Persons placed under guardianship continue to have rights. Wards under limited guardianship retain all rights except those rights the court has specifically granted their guardian. And regardless of the type of guardianship, all wards retain certain rights. For example, all wards have the right to make personal choices where those choices pose no risk of harm to the ward or others, including the right to:

- Dress and groom themselves as they wish
- Choose what they eat
- Keep a personal routine
- Choose their friends and associates
- Keep and use personal possessions
- Private time and space
- Be intimate with others of their choosing
- Know why decisions about them are made and appeal those decisions they disagree with.



In addition, wards have the right to:

- Ask the court to end a guardianship, appoint a different guardian or modify a guardianship
- Not be sterilized

Guardians have a special responsibility for the rights of wards. This responsibility includes protecting wards' rights and supporting wards in exercising their rights and privileges. Rights and privileges mean nothing unless they can be exercised. Wards should be involved in the decision making process whenever possible. Without such opportunities and experience, wards will not be able to develop or re-develop the ability to manage their affairs independently.

When does guardianship end?

In Utah, guardianship ends when:

- The court finds that a ward is capable of making responsible decisions and managing his or her affairs
- The guardian wishes to resign and the court agrees to accept the guardian's resignation
- The guardian becomes incapacitated or dies
- The court removes the guardian for some reason
- The ward dies (the guardian still needs to petition the court in order to end his/her responsibilities to the court)

How are guardianships provided in Utah?

In most instances, close family members or friends choose to be appointed as guardian of the incapacitated person. Family members and friends are usually in the best position to make decisions for wards because of their first-hand knowledge of a ward and what a ward would want if the ward were able to make his or her own decisions.





Who else provides guardianship services?

In Utah, several private guardianship agencies serve as guardians on a fee-for-service basis. Some provide services directly, while others provide services under contracts with the State.

The Office of Public Guardian (OPG) is the Utah state agency responsible for providing public guardianship and conservatorship services to incapacitated adults. OPG serves as guardian for persons who have no one else to serve as their guardians. OPG services include:

- Information, referral, and education about guardianship
- Assessment for guardianship
- Petitioning the court for guardianship
- Alternatives to guardianship
- Guardianships and conservatorships
- Protecting and advocating for the rights and interests of OPG wards





What are the alternatives to guardianship?

Because guardianship is restrictive, it should always be used as a last resort. Some decision-making tools and voluntary arrangements that may be used as alternatives to guardianship include:

- *Money management services.* Banking services, such as direct deposit and direct payment, may help persons who have trouble keeping track of their money and paying their bills. These services require the consent of the person in need of help.
- *Representative or protective payeeship.* Payeeship is an arrangement with Social Security or the Veteran's Administration where a third party (the payee) is appointed to manage the income a person receives from Social Security or the Veteran's Administration. A payeeship is only less restrictive than guardianship if a payee respects the limits of his or her authority.
- *Advance health care directives.* Advance directives are written documents that a competent person can create which tell other people how the person wants to be cared for in the event he or she becomes incapable of making decisions. A number of different kinds of advance directives are available in Utah, including a living will, a special power of attorney (for health care), a medical treatment plan, and a declaration for mental health treatment. The Utah Advance Healthcare Directive combines a Health Care Power of Attorney and a Living Will into one document. The Utah Advance Healthcare Directive can be found on www.hsdaas.utah.gov/ or www.utcourts.gov.



**What are the alternatives to guardianship?
(cont.)**

- *Trusts.* A trust is a legal arrangement in which a person or institution (“trustee”) holds title to property for the benefit of another person or persons (the “beneficiaries”). Trusts can be very useful for planning for incapacity. There are many types of trusts.
- *Joint Ownership.* Two or more people may own property jointly if they agree to do so. Many people have joint bank accounts or jointly own an automobile, a home, stocks and bonds. Joint ownership can be a convenient way to manage property and/or income of a person who is incapacitated or is having problems managing his/her property. However, joint ownership has the potential for abuse.





PUBLIC GUARDIANSHIP AGENCY

Below is a list of agencies that serve as guardians or conservators or both for incapacitated adults. Please note that the services, eligibility criteria and fees of these agencies vary. You should contact an agency directly if you want to obtain services or know more about the agency.

Office of Public Guardian (OPG)

120 North 200 West #329
Salt Lake City, Utah, 84103
801/ 538-8255 phone
www.opg.utah.gov

The Office of Public Guardian is the state agency responsible for public guardianship and conservatorship services in Utah. Please call to make a referral or discuss questions.

Services: Information, referral and education. Guardianship and conservatorship assessment. Limited and full guardianships and conservatorships. Alternatives to guardianship and conservatorship.

Eligibility: Direct services are limited to incapacitated persons who have no one to serve as their guardians or conservators. Priority is given to persons who are in life-threatening situations, or who are experiencing abuse, neglect, self-neglect or exploitation, or who are at significant risk of experiencing such problems.

Fee: Fees may be assessed for services. However, fees may be waived for persons of limited income.

Other Info: OPG guardians are certified as registered guardians by the National Guardianship Association or are working to obtain NGA certification.



PRIVATE GUARDIANSHIP AGENCIES

ElderCare Consult, Inc

The Professional Building Plaza
575 East 4500 South Suite B-210
Salt Lake City, Utah, 84107
801/ 288-4004 phone
www.eldercareconsult.com

Stagg ElderCare Services

A Division of Karren, Hendrix, Stagg, Allen & Co., CPA's
111 East Broadway, Suite 250
Salt Lake City, UT 84111
801/ 521-7620
www.khsa.biz

Stagg ElderCare Services is a private conservatorship service that works in tandem, when needed, with Elder Care Consult, Inc.

Services: Private guardianships and conservatorships.

Eligibility: Incapacitated adults and older adults.

Fee: Fee for services. Call for more information.



Guardianship Associates of Utah

320 West 200 South, Suite 140-B
Salt Lake City, Utah 84101
801/ 533-0203

Services: Guardianship, information and referral. Assisted Family Guardianship program.

Eligibility: For public-funded guardianship services: Referral from Office of Public Guardian (OPG). For private services: people with disabilities and mental issues, incapacitated adults, and the elderly.

Fee: For publicly-funded services: Current state rate. For private guardianship services, contact agency.



Guardian & Conservator Services, LLC

716 E. 4500 S., Suite N160
Salt Lake City, Utah 84107
801/ 281-1100

www.guardianconservatorservices.com

Services – Private guardian, Conservator, Trustee, VA Fiduciary, Social Security Payee, Personal Representative, Estate Management and Liquidation.

Eligibility- Incapacitated individuals in Utah.

Fees- Fee for service, call for fee schedule.

Other Information- Guardianship under the direction of a licensed clinical social worker (LCSW) and Registered Guardian with the National Guardianship Association since 1999, and conservatorship under the direction of a certified public accountant (CPA). All staff members are trained with special emphasis in working with the elderly and people with disabilities.

Age Connections

716 E. 4500 S., N160
Salt Lake City, Utah 84107
801/ 281-1100

www.ageconnections.com

Services: Private care management, consultation, court visitor investigations, non-medical in-home care attendants, family mediation.

Eligibility: Adults living along the Wasatch Front of Utah and those living in Washington County, Utah.

Fees: Fee for service, call for fee schedule or visit website



LEGAL SERVICES AND ASSISTANCE

Below is a list of agencies and programs through which legal advice and legal representation on guardianship and conservatorship may be obtained. Please note that some agencies and attorneys only represent certain parties in guardianship proceedings. Possible parties include:

- *“Petitioner” -- person filing to be appointed guardian of an allegedly incapacitated person*
- *“Proposed ward”-- person alleged to be incapacitated and in need of a guardian*
- *“Ward” -- person found to be incapacitated and appointed a guardian*

Legal Aid Society of Salt Lake

205 North 400 West
Salt Lake City, Utah 84103-1125
801/ 328-8849

www.legalaidsocietyofsaltlake.org

The Legal Aid Society of Salt Lake is non-profit organization that promotes safety, stability, and self sufficiency to low-income families and individuals, as well as victims of domestic violence, through effective, efficient legal advocacy and assistance.

Services: Representation of proposed wards and wards wanting to contest proposed or existing guardianships.

Eligibility: Legal Aid Society maintains a Guardianship program wherein Legal Aid Society will represent the proposed ward when the State of Utah’s, Office of Public Guardian files a guardianship petition against an incapacitated person and the ward does not have the resources to obtain council.

Fee: Please call or visit website



LEGAL SERVICES AND ASSISTANCE

Utah Legal Services, Inc

205 North 400 West
Salt Lake City, Utah
801/ 328-8891
800/ 662-4245 (toll

Utah Courts Self-Help Center

84103

Pilot project for the 2nd and 8th judicial districts which includes: free)
Davis, Weber, Morgan, Duchesne, Uintah and Daggett counties.
Staff is available Monday through Thursday, 11:00 AM to 5:00 PM
to respond to questions and provide information. Contact:

Mary Jane Ciccarello - Self-Help Center Attorney
Utah State Courts

maryc@email.utcourts.gov 801/238-7921 www.utcourts.gov

Direct link to guardianship and conservatorship information:

www.utcourts.gov/howto/seniors/g_and_c.asp

www.andjusticeforall.org/uls

Utah Legal Services (ULS) provides legal services to low-income persons throughout Utah on matters of civil law including guardianship.

Services: ULS may assist proposed wards and wards who want to contest a proposed or existing guardianship.

Eligibility: Services in guardianship matters are provided in most counties of Utah to persons age 60 years or older irrespective of income.

Fee: Please call or visit website

Lawyer Referral Service of the Utah State Bar

801/531-9077 or 800/698-9077 www.utahbar.org

Provides names of private attorneys who handle cases for a fee.

Provides names of private attorneys who handle cases for a fee.



OTHER SOURCES OF INFORMATION

The following is a partial list of other public agencies which may be of assistance.

Adult Protective Services

Division of Aging and Adult Services
120 North 200 West, Room 325
Salt Lake City, Utah, 84103
801/ 264-7669 (in Salt Lake County) or
800/ 371-7897 (in all other areas of the state)
www.hsdaas.utah.gov

Services: Investigation of allegations of abuse, neglect, self-neglect or exploitation of adults with mental or physical impairments, and elderly adults.

Eligibility: Any person 18 years of age or older who has a mental or physical impairment and any person 65 years of age or older. Referral must concern abuse, neglect or exploitation.

Fee: None for investigative services.

Other Info: State law requires that any person who has reason to believe that an adult with a mental or physical impairment or an elderly adult is being abused, neglected or exploited to report such information to local law enforcement or Adult Protective Services.

**Consumer Programs Specialist**

Division of Substance Abuse & Mental Health
120 North 200 West, Room 209
Salt Lake City, Utah, 84103
801/ 538-3939
www.hsmh.utah.gov

Services: Provides information about services available through Utah's public substance abuse & mental health system. Provides information about mental health consumer Advanced Directive/Self-Management Plans.

Eligibility: Any person or family member who has mental illness or substance abuse problems, or persons wishing to obtain information about substance abuse & mental illnesses within Utah's public mental health system.

Fee: None

~~Long-Term Care Ombudsman~~



211 INFO BANK

**Dial 211 or
1/888/826-9790
Available statewide**

Services: Free information and referral service for health, human and community services throughout the State of Utah.

www.informationandreferral.org

Fee: None







Area Agencies on Aging (AAA)

Area Agencies on Aging provide a link to in-home services, or services that provide temporary relief for persons caring for an individual who is ill, injured or frail (also known as respite services).

Other services include:

- Home –delivered meals
- Congregate meals
- Adult day programs
- Care management
- In-home aide service
- Information and assistance
- Senior center programs
- Transportation
- Health promotion
- Housing and home-improvement
- Medication management
- Abuse, neglect or exploitation education and awareness

The availability of these services varies in each county.

Contact the Utah Caregiver Support Program at your local Area Agency on Aging, or visit the Division of Aging and Adult Services' online directory of local services at www.hstdaas.utah.gov.





Resources for Family Caregivers

Utah Coalition for Caregiver Support www.caregivers.utah.gov

The Utah Coalition for Caregiver Support (UCCS) was established in March 2002. It has grown to include 32 member organizations from around the state. This diverse group meets monthly to discuss an issue they all share- **caregiving**.

Ucare “If a loved one leans on you, lean on us”. www.ucare.utah.gov

This comprehensive website provides information and links to information for people that are aging, have a disability or mental illness.

Alzheimer’s Association, Utah Chapter 800/272-3900 www.alz.org/utah

Provides education and support for people diagnosed with Alzheimer’s disease and other dementia, and to their families and caregivers.

Nursing Home and Home Health Care Quality Initiative

866/708-1944, ext. 625
www.health.utah.gov/rxconnectutah

Provides detailed information on past performance of every Medicare and Medicaid certified nursing home and home health agency in the state



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